

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

KARAN S.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST  
BAY,

Service Agency.

OAH No. 2011050463

**DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings (OAH), State of California, heard this matter on June 27, 2011, in San Leandro, California.

Mr. Krishnan S. represented claimant Karan S. (claimant or claimant Karan S.), who was present at the proceeding.

Ms. Pam Thomas, Director of Consumer Services, Regional Center of the East Bay, 500 Davis Street, San Leandro, California 94577, represented Regional Center of the East Bay.

On June 27, 2011, the parties were deemed to have submitted the matter and the record closed.

**ISSUE**

Is Regional Center of the East Bay obligated to pay the costs of an adult day program for claimant, who has an age of 21 years, six months, when a local school district has declined to pay for such program's educational services even though regulations designate the school district, as a generic resource, to be the entity that is responsible to provide funding for educational portions of an adult day program for the time until

claimant attains 22 years of age. And further, is service agency precluded from funding the requested day program placement because a regulation exists that establishes that regional center funds shall not be used to supplant the budget of any other agency, which comes within the meaning of “generic resource”?

## FACTUAL FINDINGS

### *Jurisdiction*

1. Claimant Karan S. receives services from Regional Center of the East Bay (service agency) pursuant to the Lanterman Developmental Disabilities Services Act (hereinafter the Lanterman Act).<sup>1</sup> Claimant timely filed an appeal of service agency’s decision denying his request for funding of services of an adult day program, known as Mission-Hope Day Program.

2. Jurisdiction for this hearing is authorized by Welfare and Institutions Code section 4700 et seq.<sup>2</sup>

### *Claimant Karan S. ’s Background*

3. Claimant has a date of birth of December 11, 1989. At the time of the hearing of this matter, claimant’s age was 21 years, six months and 16 days.

4. Claimant’s diagnosis and eligibility for regional center services and supports, as provided through service agency, is not at issue in this case. Claimant has a diagnosis of Autism.<sup>3</sup> Also he is affected by delays in speech development.

Claimant has a history that entails activities whereby he engages in aggressive behaviors against others. His aberrant behaviors include hitting others and exhibiting other aggressive conduct towards teachers and students in public school settings.

Claimant reached the 12th grade in the public school known as Washington High School in the City of Fremont, Alameda County. But although claimant had not earned a high school diploma or otherwise been designated as a high school graduate, the school

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<sup>1</sup> Welfare and Institutions Code section 4500 et seq.

<sup>2</sup> All subsequent statutory references to “the Code” are to the Welfare and Institutions Code unless specified otherwise.

<sup>3</sup> Autism is a disorder with essential features that show “the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests.” (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised (DSM-IV-TR), § Section 299.00.)

district transferred claimant to the Young Adult Program of the school district. But in approximately October 2010, claimant developed anxiety regarding attendance within public school classes and he resisted going to the public school. During one of the last days on which he attended school, applicant became physically aggressive towards one of his teachers.

### *Claimant's Contentions*

5. Claimant, through his father, contends that he is afflicted with maladaptive behaviors necessitating his enrollment in an adult day program. Claimant further avers that an appropriate program, known as Mission-Hope Day Program, has been identified as the entity that is capable to serve claimant's needs in the areas of his socialization and his gaining confidence to move into a group home. Claimant also contends that the school district has exhausted the range of educational services available for claimant to remain in a public school setting.

### *Service agency's Evidence Was Inadequate For Sustaining Its Denial of Claimant's Request*

#### *Overview of Service Agency's Unpersuasive Evidence*

6. Service agency called two witnesses. But the service agency's witnesses, both singly and collectively, did not provide persuasive, credible and competent evidence that service agency has acted reasonably in the denial of claimant's request. The evidence provided by service agency's witnesses failed to show that that agency has taken the statutorily mandated initiative to pursue the provision of services to which claimant's disability requires in meeting the objectives of the Lanterman Act. Service agency's denial of the request is unreasonable, in part, because service agency has not met its obligation to exert all good faith efforts to alert the responsible local school district, as the identifiable generic resource, to assure claimant has the full measure of day program treatment and training. And more importantly, service agency did not show that the requested adult day program is an educational institution so that the school district is required to fund placement of a consumer.

#### *a. Michael Conti*

7. Michael Conti was called as services agency's initial witness.

Through his employment with service agency, Mr. Conti has acted as claimant's case manager since 2007.

Mr. Conti is aware that claimant has certain behavior difficulties that manifest within the structure of school classrooms. The service agency employee knows that claimant has exerted aggressive and objectionable physical outbursts towards teachers employed by the Fremont Unified School District (school district).

8. Mr. Conti did not know the last date on which claimant attended school classes.

9. On April 5, 2011, Mr. Conti, in his capacity as service agency's case manager for claimant, attended a meeting to address the school district's inability to retain claimant within a classroom and the request of claimant's father that claimant be enrolled in an adult day program offered by Mission-Hope Day Program.

At that meeting, not only was Mr. Conti present, but also the meeting's participants included claimant's father, the school district's special education resource specialist (Ray Santos), claimant's school district teacher (Mary DeLeon), and Mission-Hope Day Program's representative (Marie Salta).

The April 2011 meeting focused upon claimant's challenges in functioning and being present in classroom settings of the school district. Although the school district employs behavioral specialist, it was learned that claimant continued to exhibit such disruptive behaviors that the school district could not place him in any of its public school facilities.

The April 2011 meeting concluded without any commitment by either the school district or service agency agreeing to fund the provision of services for claimant to attend an adult day program. But during the meeting, Mr. Conti heard Mission-Hope Day Program's representative make a supposed misstatement regarding funding of enrollment of consumer, younger than 22 years of age, in an adult day program; but a letter from Ms. Salta sought to correct the purported error. The letter, dated April 11, 2011, by Maria Salta, Case Manager, Mission-Hope Day Program, sets out, in part: "I made a statement that . . . the Hayward Unified School District and [service agency] made arrangements for a current student of the [school district] to attend . . . [Mission-Hope Day Program's] Hayward facility. . . . I would like to clarify that it was the Hayward Unified School District who funded such case not [service agency]."

10. At the hearing of this matter, Mr. Conti was not credible regarding applicant's educational status as of the time for the crafting and formulation of a December 2010 Individual Program Plan (IPP). And the IPP reflects inaccuracies that may have jeopardized the determination regarding current provision of services.

At the hearing, Mr. Conti asserted that the IPP reflected educational objectives that showed that applicant was "going to school" and that the school district would "continue to fund . . . [claimant's] education and develop an Individual Education Plan (IEP) that addresses all of his special needs through [December 12] 2012." That representation was not accurate regarding claimant's difficulties.

Contrary to Mr. Conti's assertions, the IPP set out that claimant refused to attend school even though an Individual Education Plan (IEP), dated October 15, 2010, prescribed that claimant "only needs to come to school after lunch for two hours." And the December 2010 IPP noted that since the October 2010 IEP meeting claimant had "not attended school."

And the IPP incorrectly notes that the school district was responsible for provision of educational services to claimant until December 2012, when claimant would be 23 years old. The correct fact is that in December 2011 applicant will reach 22 years old, when regional center will be obligated to pay for day program services.

11. Mr. Conti was not persuasive that the extent of service agency's responsibility towards claimant was to "assist . . . with referrals." Mr. Conti offered no evidence with regard to service agency taking affirmative or proactive measures to assure claimant receive services and supports contemplated under the Lanterman Act.

Mr. Conti offered no evidence since the last meeting with school district officials that he has advocated on claimant's behalf that service agency would exerts its best efforts and employ all deliberate measures to assure claimant was not neglected by school district before service agency assumed full responsibility for claimant when he reached his 22nd birth date.

12. Mr. Conti participated on May 4, 2011, in a final meeting with the same individuals who attended the meeting on April 5, 2011.

At the May 2011 meeting, in his capacity as an employee of service agency, Mr. Conti learned that the school district absolutely refused to fund claimant's placement at the adult day program offered by Mission-Hope Day Program. Among other things the rationale for the school district's determination not to fund the placement at the identified day program was that that non-public entity did not employ a certificated employee (that is, a person licensed by the California Commission on Teacher Credentialing.). The school district argued that regulations under the Education Code prohibited the school district funding claimant's placement at Mission-Hope Day Program. And another rationale for the school district's denial of funding was that the school district did not consider the subject day program's setting or services to constitute an educational setting.

13. Since May 4, 2011, service agency has taken no measure to prompt, instruct, or advise school district to pay the costs of the requested adult day program enrollment for claimant before he reaches his 22nd birthday on December 11, 2011.

14. At either the April 2011 or the May 2011 meeting, Mr. Conti also learned that school district objected to claimant's enrollment, at the expense of school district, in a non-public school setting such as the Spectrum School, which provides services to school-age consumers exhibiting maladaptive behaviors.

*b. Steven Robinson*

15. Mr. Steven Robinson offered testimonial evidence on behalf of service agency. Mr. Robinson, a licensed clinical social worker, acts as the case management supervisor for claimant's case with service agency.

Mr. Robinson was called to provide testimony regarding service agency's policy directives for funding the placement in an adult day program of a consumer, who has neither attained the individual's 22nd birthday nor graduated from high school.

16. Mr. Robinson expressed that the basis for service agency's determination not to fund claimant's requested placement in the adult day program as offered by Mission-Hope Day Program was grounded in Welfare and Institutions Code section 4648, subdivision (a)(8).<sup>4</sup> Furthermore, Mr. Robinson noted that service agency was compelled to deny the funding for claimant's requested support and service due to the recently enacted Trailer Bill, SB 74 (Chapter 9, Statutes 2011), which became effective March 24, 2011. Mr. Robinson noted that the new law emphasizes that "publicly funded school services are available to regional center consumers [until such persons attained] age 22." And Mr. Robinson read into the record: "For consumers who remain eligible for services through the public school system, this proposal requires the regional centers to use the generic education resources in lieu of purchasing day program, work/employment, independent living, mobility training and associated transportation services on their behalf. Regional centers may encourage schools to use existing vendors to meet consumer needs."

*Claimant's Evidence that Shows the Reasonableness of His Appeal against the Service agency's Denial of His Placement at*

*Claimant's Father*

17. Mr. Krishnan S., claimant's father (claimant's father) offered credible, compelling and persuasive evidence at the hearing of this matter.

18. Claimant and his younger twin brothers reside with claimant's father and mother in a dwelling in the City of Fremont, Alameda County. (Claimant's brothers have a current age of 15 years; and, they will be going into their sophomore year in high school. Neither brother has any form of developmental disability. ) Claimant's behaviors are, at times, bothersome and problematic for his brothers and parents.

19. Claimant's father credibly described his frustration with noncommittal responses from service agency and the school district over the past several months regarding claimant's receipt of services and support to aid claimant and his family in coping with the effects of claimant's Autism.

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<sup>4</sup> Welfare and Institutions Code section 4648, subdivision (a)(8), set forth that: "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

In 2009, when claimant passed his 19th birthday, and attended classes in the 11th grade at Kennedy High School, he first showed aggressive tendencies, including his exhibiting vocal outbursts and physical projections towards others.

At the completion of the 2009-2010 school year, the school district viewed claimant as having finished high school so that he was enrolled in the Young Adult Program, which is a vocational education setting that was viewed as being the most appropriate setting for claimant. At the beginning of that educational program by the school district, complainant went five days each week from 7:30 a.m. until 2:30 p.m. (But that setting did not prove to be effective educational setting for claimant.)

By February 2010, claimant's behavior manifested as exceedingly disruptive outbursts. And by that time claimant greatly resisted attending classes at the Young Adult Program. Claimant displayed aggressive outbursts towards other students, who were all diagnosed with degrees of Autism, and he became hostile towards his special education teacher.

In March 2010, claimant's father took claimant to a psychiatrist. Since that time mental health professionals have tried several different psychotropic medications to allay claimant's behaviors and tendencies to go days without sleep.

Also in March 2010, another radical solution was devised whereby claimant experienced a **markedly reduced number of hours** at the school district's Young Adult Program.

But by April 2010, teachers at the school district's Young Adult Program "gave up" on claimant due to his aggressive behaviors, which his teacher could not manage. At that point, he was attending the training program no more than two days each week. The Young Adult Program focused upon life skills training only.

By late Spring 2010, school district officials informed claimant's parents that applicant would be transferred during the ensuing school year to Washington High School that had a "mixed program" of life skills training along with without intervention services to address his behavior problems.

With the beginning of the 2010-2011 school year, claimant began the new school district program. But by October 2010, claimant reverted to showing heightened anxiety in going to school. By that time, claimant's behavior resulted in him going to school two or three days each week.

In December 2010, claimant began a new medication that his parents believed would help. But after the passage of a few weeks after school resumed in January 2011 claimant had reverted to behaviors that resulted in him causing trouble. By February 2011, his parents reached the conclusion that claimant **was being not served by the** school district's ineffective placements.

20. Over the last 18 months, claimant's parents have benefited from some weekend respite breaks from claimant whereby he stayed in group home settings.

21. As long ago as mid-February 2011, claimant's father informed service agency through Mr. Conti, that claimant's enrollments in educational programs offered by the school district were ineffective. And at the point, which was about four months before the hearing, in this matter, claimant's father requested claimant's placement in an adult day program.

And by early April 2011, claimant's father informed service agency, by email:

[Claimant] is 21 yrs. and [four] months old and is officially a student at the [school district] even though he has [not] been attending any regular school for a couple of months . . . due to various behavioral challenges . . . . He is currently receiving about [five hours per week] instruction as part of the HHI . . . program of the district – which is pretty much the program of last resort at the district and it is also not sufficient to give [claimant] any kind of routine and/or life skills training, which he desperately needs as he grows older.

And by an email, dated April 13, 2011, claimant's father reiterated in his communication with service agency that the school district had “exhausted all the programs [the district had] to offer within the district – including all attempts to mitigate his behavior challenges while he was attending the offered programs. . . . [The school district] is sticking to their stance that [the school district] cannot fund any adult day program that does not meet the definition of an ‘educational institute’ . . . .”

22. Claimant has not attended any school classroom instruction since approximately April 2011. In May 2011, the school district began to provide claimant with five hours per week of in-house instruction. But that educational exposure spanned only one month. Claimant has not received any form of educational services from the school district since June 2011.

23. In light of the school district's inability or unwillingness to provide further supports and services to claimant, who is more than 21 years of age, service agency never provided claimant's parents with assurance that service agency would pursue with utmost diligence the school district's provision of funding for placement in a suitable setting, which is an adult day program that is not an educational institution.

#### *Ultimate Factual Findings*

24. Claimant has significant and substantial challenges that would benefit from regional center services and supports. Claimant's father presented compelling testimonial evidence to establish that service agency's personnel and associated evaluators have failed to



assess the totality of claimant's complex developmental disorders and, hence, have not properly formulated the delivery of appropriate supports and services.

The weight of evidence supports a conclusion that claimant's challenges pertain to an array of disorders that are more severe than the likelihood that he is being impacted only by learning disorders or oppositional tendencies. Rather claimant is substantially disabled in the areas of gravely aggressive behaviors that are not improved by being isolated in his parents' residence. Claimant's condition originated before he attained 18 years of age. And the disorders that afflict him will continue indefinitely. His condition is not the product of solely a psychiatric disorder, learning disability or solely physical malady. And his treatment is being neglected by delays by service agency in placing him in a proper and appropriate environment.

*Dispositive Findings regarding Service Agency's Evidence*

25. The records upon which service agency's witnesses relied were incomplete, inconsistent and misleading. Moreover, service agency's personnel failed to meet the objectives of the Lanterman Act in the case pertaining to claimant.

By the admissions of service agency's personnel at the hearing, the school district does not recognize Mission-Hope Day Program to be a competent, substitute educational facility because it does not employ a single certificated teacher. Service agency failed to show that the controversy with the school district regarding whether or not the day program is an educational facility so as to establish a lawful denial of claimant's placement in the adult day program at this time when he is more than 21 years of age.

26. Neither Mr. Conti nor Mr. Robinson engaged in meaningful advocacy<sup>5</sup> for, and protection of, claimant's rights to supports and services under the Lanterman Act, when service agency learned that the school district refused to pay for claimant's placement in the day program offered by Mission-Hope Day Program.

27. Service agency's personnel did not request the area board to initiate action<sup>6</sup> against the school district when funding for claimant's placement in the subject adult day program.

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<sup>5</sup> Welfare and Institutions Code section 4648 provides, in part, "In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to . . . (b)(1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities . . . ."

<sup>6</sup> Welfare and Institutions Code section 4648, subdivision (b)(2), establishes that: "Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center may request the area board to initiate action . . . ."

28. In this matter, service agency, through its personnel, failed to show good faith adherence to the California Legislature objective that “the regional center shall secure services and supports that meet the needs of the consumer.” (Welf. & Inst. Code, §4648, subd. (a)(1).) when it failed to take any meaningful, affirmative measure to enable claimant’s day program placement when the school district refused to fund the requested services. And under the facts in this matter, where claimant is 21 years, six months of age, and where the school district is now obligated to fund day program placement until he reaches his 22nd birthday, service agency has not met the statutory directive that “[s]ervices and supports shall be flexible and individually tailored to the consumer and . . . his . . . family.” (Welf. & Inst. Code, § 4648, subd. (a)(2).)

29. When the school district gave notice that it would not fund claimant’s placement in an adult day program, service agency failed to commence any notification to the school district regarding the supposed generic source’s obligation to fund the subject service. Nor has service agency made a request for dispute resolution of the controversy within the meaning of Welfare and Institutions Code section 4659.7.

30. Service agency’s determination in this matter entails claimant going without the requested placement in a proper environment for an unreasonable period of time in a manner as to detrimentally affect the wellbeing of claimant and his family. The controversy between service agency and the school district has unduly interfered with the rights of claimant, as a consumer of regional center services, to receive services and supports as contemplated in his individual program plan. (Welf. & Inst. Code, § 4659.7, subd.(d)(1).)

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. In a proceeding to determine eligibility, the burden of proof is on the Claimant to establish she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Claimant has met his burden.

### *Statutory Authority*

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

*The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. . . .*

The complexities of providing services and supports to persons with developmental disabilities *requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports.* A consumer of services and supports, and where appropriate, *his . . . parents, guardian, shall have a leadership role in service design.*

*An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life to support their integration into the mainstream life of the community. . . .*

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities. . . .

The Legislature finds that *the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness.* It is the intent of the Legislature that *agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.*

(Empasis added.)

Welfare and Institutions Code section 4502 provides:

Persons with developmental disabilities shall have the same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California . . . . It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) *A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive and normal lives possible. Such services shall protect the person liberty of the individual and shall be provided in the least*

restrictive conditions necessary to achieve the purpose of the treatment, services or supports.  
(Emphasis added.)

Welfare and Institutions Code section 4512, subdivision (b), establishes:

‘Services and supports for persons with developmental disabilities’ *means specialized services and supports . . . directed toward the alleviation of a developmental disability or toward the social, person, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.* The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. *The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer’s family* and shall include consideration of a range of service options proposed by the individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan and the cost-effectiveness of each option. Services and supports . . . may include but are not limited to, diagnosis, evaluation, treatment . .  
(Emphasis added.)

Welfare and Institutions Code section 4646, subdivision (a), sets forth:

It is the intent of *the Legislature to ensure that the* individual program plan and *provision of services and supports* by the regional center system is *centered on the individual* and the family of the individual with developmental disabilities and *takes into account the needs and preferences of the individual and the family*, where appropriate, as well as promoting community integration, independent, productive and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.  
(Emphasis added.)

Welfare and Institutions Code section 4647, subdivision (a), provides:

Pursuant to Section 4640.7, *service coordination shall include those activities necessary to implement an individual program plan*, including but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; *securing through purchasing or obtaining from generic agencies* or other resources, services and supports specified in the person's individualized program plan; coordination of service and support programs; collection and dissemination of information; monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

(Emphasis added)

Code section 4648, subdivision (a)(6), establishes:

*The regional center and the consumer, or where appropriate his or her parents, . . . (or) conservator . . . shall, pursuant to the individualized program plan, consider all of the following when selecting a provider of consumer services and supports:*

- (A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individualized program plan.
- (B) A provider's success in achieving the objectives set forth in the individualized program plan.
- (C) Where appropriate, the existence of licensing, accreditation, or professional certification.
- (D) The cost of providing services or supports of comparable quality by different providers, if available.
- (E) The consumer's or, where appropriate, *the parents*, legal guardian or conservator of a consumer's choice of providers.  
(Emphasis added.)

Welfare and Institutions Code section 4652 provides, "A regional center *shall investigate every appropriate and economically feasible alternative* for care of a developmentally disabled person available in the region. *If suitable care cannot be found within the region, services may be obtained outside of the region.*"  
(Emphasis added.)

Welfare and Institutions Code section 4659 states:

(a) Except as otherwise provided in subdivisions (b) or (c), *the regional center shall identify and pursue all possible sources of funding* for consumers receiving regional center services. *The sources shall include*, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of services, including Medi-Cal . . . *school districts*, and federal supplemental security income and state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

(b) *Any revenues collected by a regional center pursuant to this section shall be applied against the cost of service* prior to use of the regional center funds for the services. This revenue shall not result in a reduction in the regional center purchase of services budget, except as it related to federal supplemental security income and the state supplementary program.

(c) This section *shall not be construed to impose any additional liability on the parents of children with developmental disabilities*, or to restrict eligibility for, or deny services, to any individual who qualifies for regional center services but is unable to pay.

(Empasis added.)

### *Discussion*

*Claimant's Request for Adult Day Program Placement at Mission-Hope Day Program Qualifies as Treatment, Services and Supports under the Lanterman Act.*

#### *i. The Mandate To Provide Critical Services.*

3. The Lanterman Act establishes an entitlement for eligible consumers to diagnostic, treatment and habitation services through regional centers. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal. 3d 384, 392.) Under the Act, the State of California accepts an obligation to provide facilities and services that are sufficiently complete to meet the needs of each individual with a developmental disability, regardless of age or disability. (Welf. & Inst. Code, § 4501.)

As an individual with a developmental disability, claimant's placement at Mission-Hope Day Program would grant claimant access to critical services that are necessary for him to have a more independent and productive life, which will affect the totality of his life situation. (Welf. & Inst. Code, § 4501, subd. (a)). The evidence at the hearing rendered undisputed the fact that claimant requires treatment for his maladaptive

behaviors, which are not been successfully addressed in a public school or a day program. Implementation of neither the IPP or the IEP has resulted in a current successful combination of salubrious services and supports for claimant. No amount of meetings by the school district personnel, service agency personnel, regional center committees, or collections of data and the reports that were generated have resulted in the execution of an ongoing program of treatment, supports and services that have changed claimant's behaviors or takes him away from the isolation of his parents' home. There is an extant failure of success to arrest claimant's aberrant behaviors as he approaches adulthood.

Service agency's failure to pursue, prompt and instruct the school district to pay for placement in an adult day program for several months leading up to his 22nd birthday preclude him from being integrated into the mainstream of community life to live, work, and play as independently and as much as like people without disabilities as possible, as mandated by Welfare and Institutions Code section 4501. Because of the inadequate program offered claimant by service agency, and the recalcitrance of the subject school district to cooperate in providing collaborative responses to render adequate supports and services to claimant, claimant moves further away from desirable goals with each unremitting episode of aggressive behaviors and attacks upon others, which were shown to be aggravated by applicant's isolation in his family home.

Service agency is legally responsible to "pursue" the provision of services that the Lanterman Act prescribes. Service agency has neglected to exert all deliberate and reasonable efforts to prompt, instruct and pressure the service agency to pay for claimant's enrollment in an adult-oriented day program. As between claimant and service agency, it is not claimant who must be deprived for a period of several months with services that regional center will provide funding for a prospective period of years.

ii. *The Mandate Of Individualized Services.*

4. The statute regarding the individualized nature of service provision to eligible consumers, as confirmed by California courts, is not ambiguous. (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 211 Cal. 3d 391, 392; *Williams v. Macomber* (1990) 226 Cal. App. 3d 225, 232.) Service agency and the school district expect the opposing agency, or claimant's parents, to pay for a plan of treatment and ensure consistency of the services between home and school. But claimant is now entitled to, and requires, the provision of services through Mission-Hope Day Program.

The weight of evidence is undisputed that appropriate, individualized treatment on claimant's behalf can be provided by Mission-Hope Day Program. Thus, claimant's placement at the subject day program, a treatment center which specializes in consumers like claimant, meets the statutory mandate of services and supports that constitute an individualized program centered on the needs of the individual.

Importantly, no evidence suggested that Mission-Hope Day Program would not be effective or cost-effective in meeting the goals of claimant's IPP. Conversely, there is no evidence to establish that repeating the services that have already failed public school enrollment for the 21 years old claimant would be effective or cost-effective.

### *Funding*

6. Service agency also cites Welfare and Institutions Code section 4848, subdivision (a)(8), for the proposition that it is prohibited from funding of Mission-Hope Day Program and that the school district must provide said funds, because a regional center cannot "supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

Service agency did not prove by competent evidence that Mission-Hope Day Program is an educational program for which school district is responsible to fund. Rather service agency's evidence included reference to school district's refusal to fund claimant's placement at Mission-Hope Day Program because that provider did not have a staff person who is a licensed, certificated teacher. This matter falls within the scope of the appellate court decision in *Clovis v. Unified School District v. California Office of Administrative Hearings* (9th Cir 1990) 903 F.2d 635. The *Clovis* court held that the determinative issue was "whether the placement was a response to . . . social . . . problems quite apart from the learning process." The *Clovis* court rejected the "continuum of care" argument that he consumer's medical needs included educational needs that could not be segregated from her need for treatment in a psychiatric institution. Ultimately, the school district in the *Clovis* matter was not financially responsible for the consumer's treatment even though her education was integrated into the program.

As there is no competent evidence to establish that there is any obligation by the school district to fund Mission-Hope Day Program since it may not an educational placement and, as set forth in *Clovis United School District v. California Office of Administrative Hearings, supra*, 903 F2d 635. Because service agency did not establish that the school district is an agency with a legal responsibility to provide non-educational treatment services, service agency fails to establish the applicability of Code section 4848, subdivision (a)(8). The evidence established Mission-Hope Day Program is best designacted as being a non-public institution specializing in the treatment of individuals with Autism. There is no evidence or authority that the school district has an obligation to serve claimant at Mission-Hope Day Program in order for him to receive treatment for his maladaptive behaviors.

Service agency's argument defeats all of the above-cited sections of the Lanterman Act which mandate service agency to provide services and supports including those which will allow him to function at school, pursue generic services such as the school district if it believes funds are owed, provide out-of state services, work with other agencies, prevent gaps in services, etc.



*As a Remedial Statute, the Lanterman Act must be Liberally Construed in Order to Effectuate its Purpose.*

7. Statutes such as the Lanterman Act are intended to provide beneficial services and remedies to persons or classes who require protection from harm or exploitation and thus fit the category of “remedial” statutes. (*Wilson v. Superior Court*, (1935) 2 Cal. 2d 632, 637; *Lande v. Jurisich*, (1943) 59 Cal. App. 2d 613, 617.) It is established law that remedial statutes are to be interpreted broadly to effectuate the purposes for which they were enacted. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal. App. 3d 340, 347; *People v. Merrill* (1914) 24 Cal. App. 206, 210 (1914).) The Lanterman Act, by its acceptance of its obligation to persons with developmental disabilities, clearly intends to remedy harm caused by lack of treatment and services. (Welf. & Inst. Code, § 4501.)

Because the severity of claimant’s maladaptive, aggressive behaviors is undisputed, the need for a treatment program is absolutely essential to address those behaviors. There is no credible, competent evidence to refute the contention by claimant’s father that essential supports and services must include claimant’s placement in an adult day program so as to take him outside of the family home for the purpose of claimant’s adequate socialization and emotional growth.

Without service agency acknowledging the difference between care/treatment in the form of basic services and supports versus educational instruction, service agency defeats the mandates of the Lanterman Act that claimant receive treatment appropriate to his needs. (*Jones v. Heckler* (9th Cir., 1985) 760 F.2d 993, 995).

Thus, the liberal interpretation of the Act to effectuate its remedial nature cannot be accomplished by denying placement at Mission-Hope Day Program solely on the basis that claimant has not reached age 22 years and the school district refuses to fund placement in the adult day program. Exclusion of claimant from placement in a treatment and socialization program adversely affects claimant to an unreasonable extent.

8. Service agency relies on the March 2011 Trailer Bill, SB 74 (Chapter 9, Statutes, 2011) as the ground to decline funding the subject placement in the wake of the school district’s refusal to fund claimant’s placement in the adult day program before the consumer reached his 22nd birthday. But the instant bureaucratic stalemate that operates to adversely impact claimant is not the intent of any provision of the Lanterman Act. Under Welfare and Institutions Code section 4659.7, service agency may use dispute resolution procedures to hold accountable the school district and to gain reimbursement from the school district of the costs of placement for the period before claimant reaches age 22 years. (Welf. & Inst. Code, § 4659.7, subds. (a) and (f).) But while the dispute between service agency and the school district continues, claimant should not suffer unduly. (Welf. & Inst. Code, § 4659.7, subd. (d)(1).) Accordingly, in order that consumer does not regress, immediate funding must be provided by service agency for claimant’s placement. Service agency may, at its convenience, take all necessary measures to gain reimbursement from

the school district for the funding that service agency believes school district, as a generic agency, is responsible to fund claimant's placement in an adult day program for the next few months until the consumer becomes 22 years old.

### ORDER

1. The denial of services by Regional Center of the East Bay is reversed.
2. Claimant Karan S.'s appeal from the determination by Regional Center of the East Bay is granted. Regional Center of the East Bay is required to provide services and supports to claimant Karan S. pursuant to the Lanterman Developmental Disabilities Services Act, by immediately funding claimant Karan S.'s enrollment, transportation, accommodation at an adult day program known as Mission-Hope Day Program, even though he is now 21 years, six months old.
3. Service agency may institute dispute resolution procedures with the school district in an effort to be reimbursed for its provision of funding for the subject adult day program supports and services to claimant.

DATED: July 11, 2011

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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE:

**This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (b)(2). Each party is bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days**